

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

THE PROCTER & GAMBLE COMPANY
and THE PROCTER & GAMBLE
DISTRIBUTING CO.,

Plaintiffs,

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFFS'
ORAL MOTION TO RECONSIDER
ORDER GRANTING
DEFENDANTS' MOTION IN
LIMINE AS TO PLAINTIFFS'
EXPERTS DIFONZO AND BORDIA

vs.

RANDY L. HAUGEN, et al.,

Defendants.

Case No. 1:95-CV-94 TS

Upon receiving the Court's Order Granting Defendants' Motion in Limine as to Plaintiffs' Experts DiFonzo and Bordia, Plaintiffs orally moved to reconsider as to Dr. DiFonzo only. Plaintiffs argued that Dr. DiFonzo should still be allowed to testify as to his opinion set forth in five pages of a June 30, 2003 expert Opinion. The Court heard brief argument and took the matter under advisement. The Court finds that briefing on this issue would not be helpful, and in view of the fact that trial has begun, would unduly waste the parties' resources.

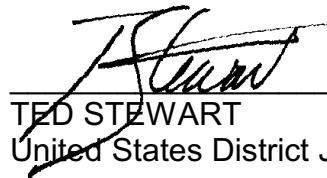
Upon review of the record, the Court finds that the June 30, 2003 Opinion was not an exhibit to, or argued in, the Motion, the opposition memorandum or the reply brief to the Motion in Limine.¹ Therefore, contrary to Plaintiffs' argument, the Court need not have considered any portion of that 2003 Opinion before excluding Dr. DiFonzo's testimony because it formed no part of the record. Thus, the Court did not "misapprehended the facts, a party's position, or the controlling law" regarding the Motion in Limine and reconsideration is not appropriate.²

The matter before the Court in this order is only the oral Motion to Reconsider. If Plaintiffs seek to present expert opinion other than that discussed in the Motion in Limine, it must be by separate motion so there can be a complete record. It is therefore

ORDERED that Plaintiffs' oral Motion to Reconsider the Memorandum Decision and Order Granting Defendants' Motion in Limine as to Plaintiffs' Experts DiFonzo and Bordia is DENIED.

DATED March 5, 2007.

BY THE COURT:



TED STEWART
United States District Judge

¹See Docket Nos. 935, 954, and 968.

²*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991) (other citations omitted)).